

### **REMARKS**

The following issues are outstanding in the pending application:

- Claims 1, 3-9, 13-15, 17-21, 25, 27 and 28 are rejected under 35 USC 103;
- Claims 10-12 are rejected under 35 USC 103;
- Claims 16 and 26 are rejected under 35 USC 103; and
- Claims 22-24 are rejected under 35 USC 103.

### **Claim Amendments**

The claims have been amended in order to more clearly define the subject matter of the invention. Independent claims 1 and 21 have been amended to recite method for permanently deforming a flexible film material by 1) providing a positive and negative mould having edge portions and upper portions; 2) forming a single receptacle depression in the film material between the moulds, wherein the film material is kept under controlled tension while it is being moulded; 3) reducing the tension in a controlled manner whereby additional film material is allowed to penetrate between the positive and negative moulds; 4) wherein creases are formed in the film material around the entire edge portion and the upper portion of the film material retains its original shape during the deforming procedure. Independent claim 25 recites a machine for permanently deforming a flexible film material that includes the same features. The subject matter of claim 13 has been add to claim 1 and is thereby cancelled. Claims 14-17 have been amended to conform these claims to the amendment to claim 1. No new matter has been added.

### **35 USC 103**

Claims 1-9, 13-15, 17-21, 25, 27 and 28 are rejected under 35 USC 103(a) as having subject matter unpatentable over U.S. Pat. No. 4,246,223 to Patterson in view of U.S. 2002/0079611 to Ellison et al. Applicant respectfully traverses this rejection.

Patterson discloses a method and apparatus for making compartment trays formed from coated paper milk carton stock in which the compartments are separated by dividers. The object of the Patterson reference is to deep draw dividers in paper trays in which a pair of draw pads are used to maintain tension on a sheet material blank as the blank is formed into an article. Tray blanks are cut and the blanks are scored in regions where the formation of wrinkles is to be avoided to induce the paper stock to fold and form before placing the tray between a single set of dies. The forming and wrinkling of the tray surface is controlled by the positions of the scored regions of the blank. The mating male and female dies form three compartments in the tray blank.

Ellison discloses a process and apparatus for preparing a molded article in which film is placed over a mold cavity extending over the mold rim cavity. The film is held in place over the mold cavity by a frame that engages the film adjacent to the mold cavity rim. Molten plastic is poured over the film, forming a molded article in the shape of the mold cavity in which the film is an outer layer of the molded article. The film tension is controlled in order to minimize film thinning and wrinkling in the molded part.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention when there is some teaching, suggestion or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1586 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992). Amended independent claims 1 and 21 are directed to a method and amendment independent claim 25 is directed to a device in which a flexible film material is permanently deformed by 1) providing a positive and negative mould having edge portions and upper portions; 2) forming a single receptacle depression in the film material between the moulds, wherein the film material is kept under controlled tension while it is being moulded; 3) reducing the tension in a controlled manner whereby additional film material is allowed to penetrate between the positive and negative moulds; 4) wherein creases are formed in the film material around the entire edge portion and the upper portion of the film material retains its original shape during the deforming procedure.

Applicant respectfully submits that the invention of Patterson modified by the tension control means as taught by Ellison does not teach or disclose the subject matter of amended claims 1, 21 and 25 for the following reasons. Firstly, the Patterson apparatus includes dies for forming multiple compartments in a paper tray having dividers between the compartments, whereas in claims 1, 21, and 25 only a single depression is formed. Secondly, the reduction in tension, as recited in the amended independent claims, allows additional film material to penetrate between the two moulds whereby forming creases in the film material around the entire edge portions of the moulds. In contract, the Patterson reference discloses that the paper blanks are scored in regions where the formation of wrinkles is to be avoided to induce the paper stock to fold and form before placing the tray blank between a single set of dies. Thus, the tension is controlled in the subject invention to form ceases, whereas in the Patterson reference, the paper stock is scored to control and prevent wrinkles before being placed between the set of dies. Further, amended claims 1, 21 and 25 recite that creases are formed in the film material around the entire edge portion of the moulds, whereas in the Patterson reference, the controlled wrinkling occurs only in selected portions of the tray. The Ellison references adds no additional elements to the Patterson reference that would result in the invention claimed in amended claims 1, 21 and 25. This is because in Ellison, the film tension is controlled in order to minimize film thinning and wrinkling in the molded part, whereas in the amended independent claims, the tension is controlled to form creases. Additionally, there is no requirement in the present claims for manufacturing a part of uniform thickness. In fact, because of the creases, the claimed method and/or device will not produce a deformed film material having a uniform thickness.

Therefore, Applicant respectfully asserts that since the Patterson and Ellison references fail to teach or suggest each and every limitation of the presently amended independent claims 1, 21 and 25 a rejection under 35 U.S.C. 103(a) cannot be sustained. Since dependent claims 2-9, 13-15, 17-20, 27 and 28 depend at least in part on amended independent claims 1, 21 and 25 respectively, they by definition are not unpatentable over the cited references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1-9, 13-15, 17-21, 25, 27 and 28 under 35

U.S.C. 103(a) as having subject matter unpatentable over U.S. Pat. No. 4,246,223 to Patterson in view of U.S. 2002/0079611 to Ellison et al.

35 USC 103

Claims 10-12 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Pat. No. 3,762,125 to Prena. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Patterson and Ellison obviates the present rejection. The Prena reference adds no new teaching to the Patterson and Ellison references that would result in the inventive method of amended independent claim 1. Claims 10-12 depend at least in part on amended independent claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1, claims 10-12 are nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 10-12 under 35 U.S.C. 103(a) as being unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Patent No. 3,762,125 to Prena.

Claims 16 and 26 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Pat. No. 4,124,421 to Fujii. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over the Patterson and Ellison references obviates the present rejection. The Fujii reference adds no new teaching to these references that would result in the inventive method of amended independent claim 1 or 25. Claims 16 and 26 depend at least in part on amended independent claims 1 and 25 respectively. If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claims 1 and 25 respectively, claims 16 and 26 are

nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 16 and 26 under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison et al. in view of U.S. Patent No. 4,124,421 to Fujii.

Claims 22-24 have been rejected under 35 USC 103(a) as having subject matter unpatentable over Patterson and U.S. 2002/0079611 to Ellison et al. in view of U.S. Pat. No. 5,009,056 to Porteous. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Patterson and Ellison obviates the present rejection. The Porteous reference adds no new teaching to the Patterson and Ellison references that would result in the inventive method of amended independent claim 21. Claims 22-24 depend at least in part on amended independent claim 21. If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 21, claims 22-24 are nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 22-24 under 35 U.S.C. 103(a) as being unpatentable over Patterson and Ellison in view of U.S. Patent No. 5,009,056 to Porteous.

### **CONCLUSION**

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03195US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

By Jan K. Simpson/  
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